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July 23, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Appeal of Schools and Libraries Division Decision
Of Sandhills Technology/Telecommunications Education Project
FCC Docket Nos. 97-21 and 96-45 /
Funding Request Number 237457

Dear Ms. Salas:

Applicant/appellant, Sandhills Technology/Telecommunications Education Project ("STEP") hereby requests that the enclosed facsimile communication, dated October 1, 1999 be made part of the record of its appeal, referenced above, which was filed July 2, 2001. Said facsimile was discovered in the files of the telecommunications services provider, NebCon, subsequent to the filing of the appeal.

The facsimile, from NebCon to the Schools and Libraries Division ("SLD"), describes the distance learning services provided pursuant to a contract entered into in 1992 between NebCon, a partnership owned equally by Nebraska Central Telephone Company and Consolidated Telephone Company, and the schools participating in STEP. In the facsimile NebCon states its belief that it was not providing common carrier service. This comment should be examined in context, and should not defeat STEP's application for funding for telecommunications services to its schools.

In 1992, when the parties entered into the contract, their focus was on the distance learning program. At that time, it was immaterial whether the provider was or was not a common carrier or what form of corporate entity the two local exchange carriers ("LECs") created to provide the portion of the network that would transport the interactive video to and among the schools. The immediate objective was to expand the education curriculum in public schools located in a remote area of Nebraska. Several years after the schools and the LECs identified a need for and conceived the distance learning program Congress enacted the Telecommunications Act of 1996, in part, to foster such programs by providing funding support through the "e-rate" program. As administered, under the program, it does matter how one categorizes the telecommunications service provider.

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We recognize that the statement in the facsimile that NebCon did not "contemplate becoming a common carrier," appears inconsistent with our argument on appeal. Nonetheless, it should be assigned little if any weight for the following reasons: First, NebCon's opinion as to the regulatory classification of its network facilities is not dispositive. Second, NebCon misunderstood common carrier service to mean service by a LEC. NebCon now understands that the linchpin of common carriage is the holding out to the public. Even service to a limited number of entities may constitute common carrier service, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, AAD/USB File No. 98-37, Order on Remand, 16 FCC Rcd. 571 (2000). As demonstrated in its appeal, NebCon has held itself out to the public, and therefore it should be classified as a common carrier.

Even if the parties contemplated, in 1992, that the portion of the network operated by NebCon would be limited to educational video services to and among the participating schools, NebCon subsequently held itself out to the public, by, for example, offering service to U.S. West, the LEC at that time, for routing.

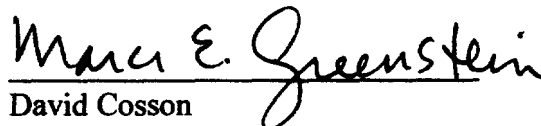
Once again, the issue is one of form over substance. NebCon provided service to STEP that qualifies for funding under the e-rate program. That should outweigh the form in which the application was tendered - by a partnership in this instance.

STEP has submitted, in a timely manner, documentation to support a finding that it should have received e-rate funding in Year 2, and denial of funding would be an inequitable and incorrect result.

Respectfully submitted,

SANDHILLS TECHNOLOGY/TELECOMMUNICATIONS
EDUCATION PROJECT

By:



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Its Attorneys

Attachments

Declaration

I, Andrew D. Jader, do hereby declare and state under penalty of perjury as follows:

1. I am the Vice President – Administration of The Nebraska Central Telephone Company and that The Nebraska Central Telephone Company is the Managing Partner of NebCon Partnership. The management of NebCon Partnership falls under my duties at The Nebraska Central Telephone Company.
2. I have read the foregoing letter supplementing the “Appeal of Schools and Libraries Division Decision” filed by Sandhills Technology/Telecommunications Project (STEP) on July 2, 2001 and I affirm that the facts contained therein are true and correct to the best of my personal knowledge, and belief, including the fact that in October 1999 I understood common carrier service to be local exchange telephone service.

Signed: Andrew D Jader

Date: 7-18-01

Facsimile Transmission

Date: October 1, 1999
To: Peter Liao
From: Andrew D. Jader, Managing Partner, NEBCON Partnership
Subject: NEBCON Services and History

Detailed below is the description of services that the Sandhills Technology & Telecommunications Project used for their Form 471. I believe this to be an accurate statement of the services NEBCON Provides.

Description of Services

Sandhills Technology & Telecommunications Project (BEAR 148926)
Service Provider: NEBCON Partnership (SPN 14306822)

NEBCON Partnership provides capacity on a fiber optic network consisting of two dark fiber strands for transmission capability for an interactive two-way educational television network. The network interconnects the schools (listed below) who participate in an educational distance learning consortium named the Sandhills Technology & Telecommunications Project. Services are provided under an existing contract.

Anselmo-Merna Public Schools
Ansley Public Schools
Arcadia Public Schools
Broken Bow Public Schools
Burwell Public Schools
Loup County Public Schools
Loup City Public Schools
Sargent Public Schools
Sandhills Public Schools

Outlined below is additional background information on the NEBCON Partnership that may help validate NEBCON as an eligible provider.

NEBCON Partnership is a partnership owned by The Nebraska Central Telephone Company (NCTC) and Consolidated Telephone Company (Consolidated). The

partnership provides the capability for educational distance learning (interactive video) to nine (9) rural school districts in Nebraska that make up the Sandhills Technology & Telecommunications Project (STEP).

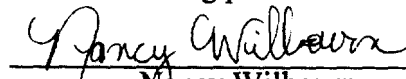
NEBCON provides the service in towns where NCTC and Consolidated provide local exchange telephone services and also in towns served by US West. The service is provided by the NEBCON in the US West served towns because at the time the project was developed US West would not provide the service. Consequently, NEBCON built and owns fiber optic facilities into the US West towns to provide the service.

The NEBCON system is used exclusively to provide educational video services for STEP. At this point in time, the partnership does not contemplate becoming a common carrier.

Should you need more information do not hesitate to contact me at 308-468-6114. Should you have a list of questions, it may be faxed to my attention at 308-468-9929 or via email to ajader@nctc.net.

CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify the foregoing letter supplementing the "Appeal of Schools and Libraries Division Decision" was served on this 23rd day of July, 2001 via hand delivery or by U.S. first class mail, postage pre-paid to the following parties:


Nancy Wilbourn

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